MJ Metal Products, Inc. *and* Sheet Metal Workers International Association, Local 207, Petitioner. Case 27–RC–7813

November 21, 1997

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (relevant portions are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review.

In denying review, we reject the Employer's argument that, inter alia, the coordinator/supervisors are 2(11) supervisors, because they have the authority to evaluate and discipline the production employees. While it is true that coordinator/supervisors fill out evaluation forms for production employees,[1] the Regional Director found that management independently reviews these evaluations. Indeed, the Regional Director found that Manager Dykes has changed evaluation items with which he disagrees. Furthermore, there is no evidence indicating what effect these evaluations have on the production employees' wage rates as the Employer's president, Johnston, makes this determination independently and communicates it to the employees. See *Northcrest Nursing Home*, 313 NLRB 491, 498 fns. 36 and 37 (1993). Similarly, the Regional Director found, and the Employer does not contest,[2] that while coordinator/supervisors have recommended discipline of production employees, management performs its own investigation and does not necessarily follow the coordinator/supervisors' recommendations. As such, the Employer has failed to show that coordinator/supervisors' authority rises above the ability merely to report employee problems to higher management. This ability, without more, is insufficient to confer supervisory status. *Passavant Health Center*, 284 NLRB 887, 892 (1987).

[1] The Regional Director found that two of the three coordinator/supervisors have evaluated employees. The assistant coordinator/supervisor has not evaluated any employees.

[2] The Employer contends that the Regional Director erred in finding that Johnston did not follow the recommendation of coordinator Newcombe in deciding to cut an employee's overtime pay. The Employer cites Newcombe's testimony that he had recommended ''something be done,'' arguing that this shows that Johnston followed Newcombe's recommendation. We agree with the Regional Director that this does not establish Newcombe's authority in effectively recommending discipline, as Newcombe never made a specific recommendation. The Employer provides no explanation as to how the decision to cut the employee's pay was made.

APPENDIX

DECISION AND DIRECTION OF ELECTION

The Employer, MJ Metal Products, Inc., is engaged in the fabrication and installation of metal products at its facility in Casper, Wyoming. The parties stipulated at the hearing that the unit appropriate for collective bargaining (the unit) should include all full-time and part-time production employees engaged in the fabrication, assembly, shipping and receiving, and installation of products produced at the Employer's Casper, Wyoming facility; and exclude all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act. The parties also stipulated that shop-helper/draftsman, Celeste J. Johnston, is ineligible to vote in the directed election, because she is the daughter of the sole shareholders of the Employer's corporation. That stipulation being supported in the record, I find that Celeste J. Johnston is ineligible to vote. *Bridgeton Transit*, 123 NLRB 1196 (1959).

The sole issue to be determined herein is whether Coordinator/Supervisors Dan Ashley, Bardo (Bart) Miller, Leslie Jay Newcomb, and Assistant Coordinator/Supervisor Brian Johnson are statutory supervisors as contended by the Employer. (Hereinafter, these individuals shall be referred to as coordinators.)

The owner, president, and general manager of the Employer is Mark P. Johnston. Reporting to him are Estimator Eric Riesberg, Office Manager Novella Marvel, and Production Manager John Dykes. The parties stipulated, the record supports and, accordingly, I find that these individuals are managerial and should be excluded from the unit.

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The nine unit employees work on three teams. The teams work on staggered shifts to provide maximum coverage for shipping and receiving. This team concept was established in 1995, after the Employer hired a consultant to organize the operation. The various job titles of the mangers and coordinators were established at that time also.

Team one works from 6 a.m. to 2:30 p.m. and its three employees are overseen by Coordinator Dan Ashley. Team one is responsible for the shearing, layout, and punching operations. Specifically, they take the flat metal sheets, shear them to size, and machine punch the necessary holes. They then deburr the parts and place them in bins for the next phase of production.

Team two is overseen by Coordinator Jay Newcomb. Newcomb and three additional employees work from 8 a.m. to 4:30 p.m. Team two employees assemble the flat parts and spot weld to form the particular product. After the product is welded, it goes to Brian Johnson, the assistant coordinator, who works 10 a.m. to 6:30 p.m. Johnson, who also reports directly to Newcombe, polishes the products which are sold unpainted to the customers. Johnson also is in charge of crating the product for shipping and arranges transportation. Johnson occasionally requests that Newcombe assign an employee to assist him, but Johnson normally performs his duties alone.

Team three, overseen by Coordinator Bart Miller, works from 10 a.m. to 6:30 p.m. Miller and his three employees are responsible for the assembly of ovens and refrigerators manufactured by the Employer. Team three employees assemble the products with nuts and bolts and wire them for electricity.

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All employees, including those in classifications excluded from the unit, enjoy the same fringe benefits including vacations and health insurance. There is no dress code or uniform policy for any employee. The only nonsalaried employees are the office clerical employees, unit employees, and coordinators. Nonsalaried employees record their time worked on an electronic timecard system. The unit employees' wages range from $5.50 to $8 per hour. Ashley earns $612, Newcombe $11.75, and Miller and Johnson earn $9.25 per hour. It is undisputed that the four coordinators do not have the authority to hire, fire, or discipline employees. The coordinators do not attend the regularly scheduled managerial meetings at which the production schedules are established. While coordinators can recommend discipline of employees, General Manager Johnston independently investigates all such recommendations before finalizing any decision regarding discipline. In this regard, the record reflects that Ashley and Newcombe have each recommended the discipline of different employees. Johnston ultimately did not take any action on Ashley's recommendation. With regard to Newcombe's recommendation, Johnston did not discipline the employee other than to cut the employee's overtime, which had not been a recommendation made by Newcombe. All requests for vacation and time off must also be made directly to Johnston.

In 1995, the Employer implemented an annual employee evaluation system at the direction of the consultant. As a result, Coordinator Newcombe has filled out evaluation forms on a number of employees. Ashley has filled out an evaluation on one employee. Miller and Johnson have not evaluated any employees.

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These forms are then submitted to Dykes, who can and does change the evaluation items he disagrees with. Dykes then meets with Johnston to discuss the evaluation. The coordinator is not present at this meeting. Johnston later meets with the employee being evaluated and makes independent determinations as to the effect the evaluation will have on the employee's wage rate.

Ashley, Newcombe, and Miller receive production schedules several times a week directly from Johnston. They are responsible for seeing that the schedule is met. If there are problems with the schedule, they discuss it with either Production Manager Dykes or Johnston. They do not, however, have the authority to change the priority of the scheduled production. While Dykes meets frequently with the individual coordinators to discuss production, these meetings are not prescheduled and generally occur on the production floor. These meetings also are strictly to discuss production problems, not employee grievances or terms and conditions of employment. The coordinators assess the scheduled production at the start of their respective shifts and assign their team employees to machines or tasks at the start of the shift to fulfill the production requirements. Coordinators do the same thing when the employees return from lunch. With regard to the assignment of work to the team employees, the evidence establishes that these assignments to various machines and tasks are based solely on the training and skill level of the person being assigned in conjunction with the production schedule, leaving little room for discretion on the part of the coordinator. The coordinators can trade employees among the teams

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for specific production runs without seeking authorization from Dykes or Johnston. However, the selection of the employee being lent to another team is based on which employee possesses the skill to run the equipment or perform the needed task and can be spared, again leaving little room for discretion. Ashley testified that he spends about 70 percent of his time working with tools. This is, in part, because he currently has three new employees on his team so he is involved in training these new employees. Newcombe testified that he spends about 80 percent of his time working with tools, and Miller and Johnson both spend over 95 percent of their time working with tools. The time not spent working with tools involves the meetings with Dykes and Johnston referred to above, reviewing the production schedule, observing the progress and quality of the actual production runs and cross-training employees.

Notwithstanding the above, the Employer contends that the four coordinators exercise independent judgment in directing the work of the employees on their respective teams and, accordingly, are supervisors within the meaning of Section 2(11) of the Act. I find that the record before me does not support a finding that these four are statutory supervisors for the following reasons:

The Board has long held that the title ''supervisor'' is not dispositive of supervisory status. *Waterbed World*, 286 NLRB 426 (1987). To support a finding of supervisory status an individual must possess one or more of the indicia set forth in Section 2(11) of the Act. The statutory criteria are read in the disjunctive and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Providence Hospital*, 320 NLRB 717 (1996). An

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individual possessing 2(11) supervisory indicia must exercise that authority in a manner which is not merely routine or clerical in nature and only individuals with genuine management prerogatives are to be considered supervisors as opposed to leadmen and other minor supervisory employees. *Azusa Ranch Market*, 321 NLRB 811 (1996), citing *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). Further, the burden of proving that an individual is a supervisor is on the party alleging such status. *California Beverage Co.*, 283 NLRB 328 (1987).

Applying these principles to the facts of this case, I find on the record before me that the Employer has failed to establish that coordinators perform their team coordinator duties in a manner which is not merely routine or perfunctory in nature. While the Employer contends that the four coordinators assign and direct the work of their team employees, such direction is incidental to their level of experience and length of time working for the Employer. The record does not establish that they exercise independent judgment in making such assignments. Moreover, any deviations from the production schedule established by Johnston must be approved by him. Finally, although supervisor/employee ratios are not dispositive in establishing supervisory status, I note that to find the four coordinators to be statutory supervisors would result in a ratio of about two employees for each supervisor. Based on the above, I find that there is insufficient evidence that the coordinators possess sufficient indicia of supervisory status set forth in Section 2(11) and, accordingly, I shall include them in the unit.

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There are approximately 13 employees in the unit found appropriate.